

Canby City Council
Regular Meeting
April 1, 1974

The meeting was called to order at 7:30 p.m. by the mayor followed by the traditional flag salute.

Roll Call

Present: Mayor Roth, Councilmen Gerber, Giger, Tate, Wagner and Westcott

Absent: Councilman Kariker

Others Present: Attorney Bettis Sr., Administrator Wyman, Supt. Whiteside, Treasurer St. Amant, Police Chief Graziano, Fire Chief Buttolph, Planning Commission Chairman Ross and Foreman Atwood

Upon call for additions or corrections to the minutes of the previous meeting March 18 and the Special Meeting March 25 and there being no comment from the Council, Mayor Roth declared the minutes approved as distributed.

Administrator Wyman read a letter from Attorney Elton T. Lafky notifying the City of the alleged unlawful arrest of William H. Haskins on September 30, 1973, and a warning of damages in the amount of \$25,000 would be claimed in a suit if not settled within 10 days. Attorney Bettis informed the Council that the City's liability insurance carrier had been notified and would defend the City in the pending suit.

Attorney Bettis informed the Council that Ronald Von Walters had appealed his case against the City of Canby to the Oregon Court of Appeals after having lost on demurs in all of the lower courts.

Administrator Wyman read a letter from Attorney Bettis regarding the agreement with Southern Pacific Company dated November 14, 1927, for use of N.W. 3rd Ave. as a City street right-of-way. The Council discussed the contents of the letter in connection with the needed improvement of N.W. 3rd Ave. as an access route for Globe Union Co. Administrator Wyman reported that he had been unsuccessful in getting the representatives of businesses and involved property owners together for a meeting to discuss the street improvement in that area as directed by the Council at a previous meeting. Mayor Roth rescheduled the report for the Council meeting of April 15.

Administrator Wyman read a letter from John Nieland, Postmaster, regarding the impassable conditions that exist on S. Pine Street and requesting that the street service be improved. The Council discussed and acknowledged that the City has no jurisdiction regarding conditions of said S. Pine Street. The mayor instructed Administrator Wyman to so advise Mr. Nieland.

Administrator Wyman read a letter from the center manager of the Loaves and Fishes Center in Canby containing some twenty signatures and requesting that the City provide financial assistance from Federal Revenue Sharing Funds to help support a bus which has recently been provided for transportation of elderly citizens. The Council discussed the matter and a motion was made by Councilman Gerber, seconded by Giger and carried unanimously to refer the matter to the Budget Committee for consideration.

Administrator Wyman read a letter from the Bureau of Municipal Research regarding the recodification of City ordinances being compiled at the present time and the estimated cost thereof being about \$1,200. After a period of discussion a motion was made by Councilman Tate, seconded by Gerber and carried unanimously to approve the codification project up to a cost of \$1,200.

Paul S. Montecucco of Montecucco Farms appeared before the Council to discuss a complaint which he had previously filed with the Dept. of Public Works and Planning Commission regarding flooding of certain portions of Montecucco Farms as a result of excess surface water from the Country Club Estates development. The Council discussed the matter with Montecucco and heard the reaction of the Public Works Dept. and Planning Commission from Supt. Whiteside and Planning Commission Chairman Ross. After a period of detailed discussion a motion was made by Councilman Tate, seconded by Westcott and carried unanimously that a letter be directed to the Willamette Valley Country Club and Payton-Anderson requesting that the problem be resolved or an agreement reached and a reply made to the Council not later than May 5.

The Council heard favorable recommendations of the Planning Commission in regard to the application of Dick Brenneke Jr. for annexation of Guardian Properties intended for a shopping center adjacent to the north City Limits. After a thorough discussion and testimony by Mr. Brenneke, a motion was made by Councilman Giger, seconded by Gerber and carried unanimously adopting Resolution CLXII; A RESOLUTION FURTHERING ANNEXATION TO THE CITY OF CANBY, CLACKAMAS COUNTY, OREGON OF THE TERRITORY DESCRIBED IN THE ATTACHED EXHIBIT "A" for immediate transmittal to the State Boundary Commission along with the other pertinent forms and information. Thereupon Mr. Brenneke delivered to the City Recorder a personal check in the amount of \$250 representing annexation application fee as provided for in Ordinance #541.

The recorder presented an application from Merlin Rodman of the Canby Green Market for renewal of liquor license and accompanied by approval of the Fire Chief with certain improvements to be made by May 5. During the discussion before the Council, Police Chief Graziano stated the liquor license of the Canby Green Market presented no problems for the Police Department and thereupon signified his approval. Then a motion was made by Councilman Giger, seconded by Wagner and carried by a vote of 4 yes and 1 abstention that the application be approved and recommended to the Liquor Control Commission.

Claims against the City in the amount of \$6,927.48 were presented by the administrator with supporting computer print-outs. Thereupon a motion was made by Councilman Giger, seconded by Gerber and carried unanimously by roll call vote that claims against the City be approved for payment and warrants be drawn on the City Treasurer for payment thereof. At this point the Council agreed that Month-to-Date print-outs were of no particular value to them and should be eliminated in the future.

The Council discussed the tentative revisions in the policies of the CRAC organization allotting votes to the City of Portland and its allied entities as compared with the allocation of voting rights to the other counties and cities outside Multnomah County. The Council held firm in oral discussion that counties and cities outside Multnomah County should be allowed to control the majority of votes in matters pertaining to area policy.

Administrator Wyman reported on a survey that he had conducted regarding the participation of other cities in Clackamas County pertinent to the County Counseling Recreation Program as presented in a recent letter from the Clackamas County Juvenile Department. His report indicated that no definite participation was intended by the other cities contacted. After a period of discussion and a report from the Chief of Police that the recreation program had no particular effect in Canby, a motion was made by Councilman Westcott, seconded by Giger and carried unanimously that the request for funds for the County Counseling and Recreation Program be denied.

Ordinance #580. AN ORDINANCE PROVIDING FOR THE CALLING OF A CITY TAX BASE ELECTION IN THE CITY OF CANBY, CLACKAMAS COUNTY, OREGON ON MAY 28, 1974 FOR THE PURPOSE OF SUBMITTING TO THE LEGAL VOTERS OF THE CITY OF CANBY, OREGON THE QUESTION OF ESTABLISHING A NEW TAX BASE FOR THE PURPOSE OF APPLYING THE LIMITATIONS ON TAXATION SET FORTH IN SECTIONS 11, ARTICLE XI, OREGON CONSTITUTION was read by the City Attorney. During the discussion that followed, Mayor Roth urgently requested that if any councilman intended to cast a vote against the passage of Ordinance #580 that he do so now instead of at the final reading, in that if said ordinance were defeated at the final reading there would not be sufficient time to revise said ordinance and present it to the voters before the November election. After a detailed period of discussion a motion was made by Councilman Giger, seconded by Gerber and carried unanimously by roll call vote to pass Ordinance #580 on first reading, to post in compliance with the City Charter and to come up for final action on May 6, 1974.

At that point Councilman Westcott asked if it would be reasonable to include the names of minority voters or those who abstain in the minutes of the meeting thereof, particularly when the motion is by roll call vote. Mayor Roth said he could see no reason for not including them in the minutes.


Attorney Bettis reported to the Council the findings through minute research of information pertaining to the purchase of the Molalla Electric Co. by the City of Canby in 1922 and the interest at the rate of \$110 per month that has been collected from the Light Department for over 50 years. Attorney Bettis recommended that the City consider the obligation paid principally due to lack of further substantiation. A motion was made by Councilman Giger, seconded by Gerber and carried unanimously authorizing the attorney to draft a resolution to cancel the Light Department's further obligation for the Council's consideration in the near future.

A letter from Traffic Safety Chairman Lloyd Younce was read in which he urged that the Council further consider left-turn channelization on Hwy. 99E. After a short period of discussion the Council agreed to further the discussion at the next Council Workshop.

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Planning Commission Chairman Ross announced that he was heading a delegation of businessmen who were making a survey of the possibilities of releasing and improving the parking lots adjacent to N.W. 1st Avenue and the railroad right-of-way. Ross asked that some type of temporary repairs were made immediately. Administrator Wyman insisted that temporary repairs were out of the question due to the fact that old paving required scarifying and that alone was expensive. The mayor recommended that Wyman write a letter to the Merchant's Association in an attempt to correlate future plans regarding the parking lots.

The meeting was adjourned at 10:35 p.m.


J. R. Richardson, City Recorder


Paul N. Roth, Mayor

WADE P. BETTIS
RAYMOND R. REIF
WADE P. BETTIS, JR.

BETTIS & REIF
ATTORNEYS AT LAW
160 N.W. THIRD AVENUE
CANBY, OREGON 97013

TELEPHONES
266-1113
655-1674
AREA CODE 503

March 25, 1974

Honorable Paul N. Roth, Mayor
City of Canby
P. O. Box D
Canby, Oregon 97013

Re: Southern Pacific Company Agreement and NW 3rd Avenue

Dear Mayor Roth:

I have reviewed the Southern Pacific Company Agreement with the City of Canby dated November 14, 1927, and your copy is returned herewith. The following are my comments as you requested:

Paragraph 2 recites the grant by the Railroad to the City of the "right to construct and maintain a highway upon and across . . ." The second paragraph commencing in the middle of Page 2 recites that the grant is "subject and subordinate to the prior and continuing right and obligation of first party (Railroad) and its successors to use and maintain its entire railroad right of way and property . . ." The third paragraph on Page 2 provides that if the second party (City) abandons the use of the land or any part thereof or fails at any time to use it for the stated purposes and for a continuous period of one year, the right as granted shall "cease to the extent of the use so abandoned or discontinued." The last point and which is a significant feature of the Agreement is contained in the fourth paragraph on Page 2 which recites as follows and I quote in full:

"The second party shall keep the said highway in good condition and repair on the premises hereinabove described as long as the same shall be maintained thereon."

"Good condition and repair" is not otherwise defined, but I don't think that is a problem because it isn't difficult for reasonable men to agree on what is meant by such a term.

There is definitely a duty and responsibility of the City to keep this portion of NW 3rd Avenue in good condition and repair. Failure to do so would not of course result in an abandonment or discontinuation of the City's use and thereby work a forfeiture of its rights under the Agreement, but a failure to do so would be a breach of the conditions under which the City accepted and now holds and enjoys the use of the subject property.

Honorable Paul N. Roth, Mayor
City of Canby
3/25/74
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I therefore suggest and recommend that the City should inspect through its Public Works Department and receive a report and recommendation as to the costs for making any and all necessary repairs in order to put the street in "good condition and repair" and then make arrangements in next year's budget for the necessary funds to do the required work. If there are funds on hand in this year's budget for such purpose or other sources for such project, then they could of course be used on Council approval.

If you have further questions concerning this matter, please let me know.

Sincerely,

BETTIS & REIF

/s/ Wade P. Bettis

Wade P. Bettis

WPB:EN

Encl.

cc: Mr. J. R. Richardson, Recorder
Mr. Harold A. Wyman, Administrator ✓
Mr. John L. Whiteside, Supt. of Public Works

UNITED STATES POST OFFICE

IN REPLY REFER TO

CANBY, OREGON 97013

March 21, 1974

City of Canby
P. O. Box D
Canby, OR 97013

Attention: Mr. Wyman

Dear Postal Customers:

This is to advise you that the condition of South Pine street is such that curtailment of Postal Delivery Service to your residences is imminent. Our delivery equipment has suffered some damage from this travel, and an inspection indicates that we can expect more of the same.

I have contacted Mr. Wyman of the City of Canby, and am advised that South Pine Street is not under city maintenance. I shall, however, send a copy of this letter to the City.

Please give this matter your immediate attention, for if there is no improvement within the next ten days different arrangements will be set up for the delivery of your mails.

Respectfully,


John R. Highland, FM

LOAVES AND FISHES
488 N.W. 9th
Canby, Oregon

March 22, 1974

Mayor Roth and City Council
Canby
Oregon

Dear Sirs:

The Canby Loaves and Fishes Organization for Senior Citizens is buying a 15-passenger van for the purpose of transportation for Senior Citizens. The vehicle will be used to transport Senior Citizens to the doctor, shopping, and to the Loaves and Fishes center, but like all non-profit organizations, finance is always a problem.

A local service club has pledged to buy the license and insurance for us, but funds are still needed for driver's wages, gas, and upkeep on the vehicle. We know that the City of Canby has many financial obligations, but we are asking if the City of Canby could possibly give to their Senior Citizen tax payers, a share of the Federal Revenue Sharing program.

We estimate that we will need approximately \$4,000 for a years expense on the van. Thus, any financial assistance the City of Canby can give us would be greatly appreciated.

Sincerely yours,

Verna V. Forrest

Verna V. Forrest
Center Manager

Loaves and Fishes Supporters

Gen. Cantley

Walter Dahman

Lena Hohenman

Ida Drum

Sara W. Tangen

Liz Skov

Raberta Webb

Cora Young

Halvor Gregersen

Lillian Gregersen

Harry Baker

Mabel Baker

Barbara Pagh

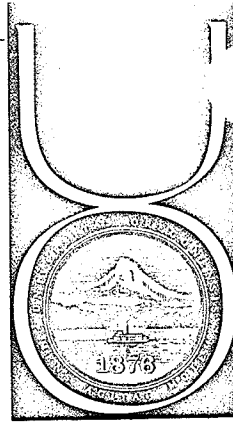
Don Ellison

Bernice Buck

Dorene Ellison

Anne Reusser

UNIVERSITY OF OREGON



BUREAU OF GOVERNMENTAL
RESEARCH AND SERVICE

Mailing Address: P.O. Box 3177
School of Community Service and
Public Affairs

EUGENE, OREGON 97403
telephone (code 503) 686-5232

March 25, 1974

Mr. Harold A. Wyman
Administrator, City of Canby
P.O. Box D
Canby, Oregon 97013

Dear Harold:

Enclosed is a receipt for Canby ordinances No. 481 to 579 recently received for inclusion in the Canby ordinance compilation revision.

We have reviewed the letter from Wade Bettis, and I have conferred with him by phone about our questions. We are now ready to proceed with the revision project.

In view of the large amount of material added since our last estimate of cost, we have reestimated the expenses to complete the work to be about \$1200.00. Although we expect to complete it before July 1, it will be possible for the city to carry over part of the bill to be paid from next year's budget, if that would be more convenient.

Sincerely yours,


James M. Mattis
Legal Consultant

JMM:fdj

Enclosure

cc: J. R. Richardson, City Recorder

3610 N. Locust
Canby, Oregon 97013
March 26, 1974

Canby City Council
Canby City Hall
182 N. Holly Street
Canby, Oregon 97013

Attention: Mayor Paul N. Roth and City Councilmen

Gentlemen:

We wish to bring to your attention that land changes brought about by Country Club Estates Annex No. 2 Subdivision have caused water to run onto our fields. We have sustained considerable damage to our crops. Approximately four acres of alfalfa have drowned, and water flowing off the slope washes onto our rhubarb field.

All of this water enters our farm tile line which runs from Ferry Road east across our land, through the subdivision, across the golf course and into the Willamette River. This tile was designed and engineered by the South Clackamas Soil Conservation District according to specifications for farm drainage. It has drained our fields satisfactorily since being installed ten years ago. However, due to the greatly increased amount of water entering the tile from the subdivision area, our farmland cannot drain properly.

We feel a large opening to the river at the subdivision site must be provided this summer to ensure no further damages. Losses to this point will be tolerated, but any damages after August 1, 1974 will be the responsibility of the party or parties liable.

Respectfully yours,

MONTECUCCO FARMS

By Paul S. Montecucco

THE CITY OF

INCORPORATED
1893

Canby

GARDEN SPOT OF THE WILLAMETTE VALLEY

POSTOFFICE BOX D

CANBY, OREGON 97013

Paul N. Roth, Mayor
Harold A. Wyman, City Administrator
Jarrel R. Richardson, Recorder
John F. St. Amant, Treasurer
John L. Whiteside, Supt. Public Works Actg.
Wade P. Bettis, City Attorney
Vincent Graziano, Chief of Police
Everett L. Buttolph, Fire Chief
Gordon L. Ross, Chairman Planning Com.
Dale D. Liberty Sr., Municipal Judge
Norman Christiansen, Fire Marshal

COUNCILMEN
Anthony E. Gerber
Howard J. Giger
C. Ron Kariker
Albert D. Tate
Joe M. Wagner
Robert D. Westcott

March 27, 1974

Honorable Mayor
and City Council

The Canby Planning Commission at its regular meeting of March 27, 1974 reviewed an application for annexation. The property located at the intersection of S. Pine St. and Hwy 99E known as the proposed Canby Shopping Center by Guardian Properties, Inc. Said annexation application is to be submitted to the Boundary Review Board.

Motion was made by Commissioner Edgerton to recommend to the City Council, the application for annexation is in order and that we may proceed with the annexation hearings. Seconded by Commissioner DiTommaso, motion carried with a 5 yes 1 no vote by Commissioner Cutsforth.

Sincerely,

Gordon L. Ross, Chairman
Canby Planning Commission

By: Thelma Austin

Thelma Austin, Secretary

GLR:ta

cc: Planning Commission
Wade Bettis

THE CITY OF

INCORPORATED
1893

Canby

GARDEN SPOT OF THE WILLAMETTE VALLEY

POSTOFFICE BOX D

CANBY, OREGON 97013

Paul N. Roth, Mayor
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Norman Christiansen, Fire Marshal

COUNCILMEN
Anthony E. Gerber
Howard J. Giger
C. Ron Kariker
Albert D. Tate
Joe M. Wagner
Robert D. Westcott

March 29, 1974

Mr. R. W. Brenneke
Guardian Properties, Inc.
811 East Burnside
Portland, Oregon 97214

Dear Mr. Brenneke:

The Canby Planning Commission at its regular meeting of March 27, 1974 reviewed an application for annexation to be submitted to the Boundary Review Board. Said application was referred to the Planning Commission by the City Council, and is for the property at the intersection of S. Pine St. and Hwy 99E known as the proposed Canby Shopping Center by Guardian Properties, Inc.

Motion was made by Commissioner Edgerton to recommend to the City Council the application for annexation is in order and that we may proceed with the annexation hearings. Seconded by Commissioner DiTomaso, motion carried by a 5 yes 1 no vote by Commissioner Cutsforth.

Sincerely,

Gordon L. Ross
Chairman, Canby Planning Commission

By: Thelma Austin
Thelma Austin
Secretary

GLR:ta

cc: Planning Commission
Mayor Roth
City Council
Wade Bettis
H. Wyman